

**REMARKS**

The Final Office Action dated August 10, 2005 has been carefully considered. Claims 1-4, 7-12, 29, and 31-32 are presently pending for consideration. The following remarks are presented in a sincere attempt to place this Application in condition for allowance. Reconsideration and allowance are respectfully requested in light of the following remarks.

Claims 1-4, 7-12, 29, 31 and 32 stand rejected under 35 U.S.C. § 103(a) in view of U.S. Patent 6,141,245 to Bertin et al. ("Bertin"), and U.S. Patent 6,509,236 to Aipperspach et al. ("Aipperspach"). These rejections are respectfully traversed on the grounds that they are legally improper.

It is respectfully pointed out that Aipperspach, which is only cited as a reference under 35 U.S.C. § 102(e), is assigned to International Business Machines Corporation ("IBM"), the same assignee as the present patent application. Further, the issuance date of the Aipperspach reference is January 21, 2003, less than one year prior to the October 23, 2003 filing date of the present application. Pursuant to 35 U.S.C. § 103(c)(1):

Subject matter developed by another persons, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Applicants submit that the subject matter of Aipperspach and the claimed invention were, at the time the claimed invention was made, owned by the same person (IBM) or subject to an obligation of assignment to the same person (IBM), as required under 35 U.S.C. § 103(c)(1). MPEP 2146. Since Aipperspach qualifies as prior art only under subsection (e) of 35 U.S.C. § 102, it may not be cited as prior art under 35 U.S.C. § 103 (a). Accordingly, it is respectfully submitted that the rejection of Claims 1-4, 7-12, 29, 31 and 32 under 35 U.S.C. § 103(a) should be withdrawn.

Since Aipperspach may not be cited against the 1-4, 7-12, 29, 31 and 32 under 35 U.S.C. § 103 (a), and there is no other basis of rejection for these claims, it is respectfully submitted that Claims 1-4, 7-12, 29, 31 and 32 are in condition for allowance.


For all of the foregoing reasons, it is respectfully submitted that Claims 1-4, 7-12, 29, 31 and 32 are in condition for full allowance and such is courteously requested.

Applicant does not believe that any fees are due. However, in the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-0605 of CARR LLP.

Should the Examiner require any further clarification to place this application in condition for allowance, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,

CARR LLP

  
Gregory W. Carr  
Reg. No. 31,093

Dated: 10/10/05  
CARR LLP  
670 Founders Square  
900 Jackson Street  
Dallas, Texas 75202  
Telephone: (214) 760-3030  
Fax: (214) 760-3003